

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
BALTIMORE DIVISION**

JASON ALFORD *et al.*,

Plaintiffs,

v.

THE NFL PLAYER DISABILITY &
SURVIVOR BENEFIT PLAN *et al.*,

Defendants.

Case No. 1:23-cv-00358-JRR

**DECLARATION OF DAVID B. LASATER IN SUPPORT OF
DEFENDANTS' JOINT OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL
DISCOVERY**

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I, David B. Lasater, hereby declare pursuant to 28 U.S.C. § 1746, under the penalty of perjury, that the following is true and correct to the best of my knowledge, information, and belief; that I have personal knowledge of the matters set forth herein, or knowledge based on my review of business records; and that, if called to testify as a witness in this action, I could and would testify competently thereto.

I. BACKGROUND

1. I am a Senior Managing Director at FTI, a publicly-held, global consulting firm. I have been providing statistical and econometrics consulting to clients since 1979. During that time, I have provided deposition, trial, and administrative hearings testimony using large volumes of accounting and other operational data and applying statistical and econometric analyses to those data in a wide variety of forums, including U.S. District Courts, state courts, international arbitrations, and U.S. administrative tribunals.

2. I hold a Ph.D. in Accounting Research Methodologies, Capital Markets, and Quantitative Methods from The University of Texas at Austin (1982), a Masters degree in Professional Accounting from The University of Texas at Austin (1979), and a Bachelors in Business Administration degree from the University of Houston (1973). I am a licensed Certified Public Accountant in New York (since 1990) and Texas (since 1982). I incorporate by reference my curriculum vitae attached as Appendix 1 to the November 18, 2024 Declaration of David B. Lasater in Support of Defendants' Opposition to Plaintiffs' Motion for Class Certification (the "November 18, 2024 Lasater Declaration") in this matter.

3. This Declaration is based on my analysis of data received from counsel in this matter, which is listed as Appendix 2 to my November 18, 2024 Lasater Declaration in this

matter. This declaration is also based on my training, knowledge, and experience, as described more fully herein.

4. My employer, FTI Consulting, charges \$695 per hour for my time in this matter. FTI charges between \$300 and \$695 per hour for members of my team, who performed work at my direction in connection with my preparation of this declaration. I am independent of the parties in this matter, and my compensation is not dependent on the outcome of this matter.

II. MY ASSIGNMENT

5. Counsel for Defendants have asked me to analyze the validity of specific purported statistical assertions that Plaintiffs make at page 17, at FN 18, and at FN 26 of their Motion to Compel as purported support for their discovery request, citing to Paras 117, 118, 122, 123, 146, 199, 301, 328, 337, 338 of the Amended Class Action Complaint.¹

6. I have performed (or directed my team to perform) statistical analyses using applications and appeals data provided to me by Defendants in connection with this litigation² to test whether the data support these hypotheses. I find that the data do not support Plaintiffs' allegations.

7. My analysis of the data reveals that 48.4% percent of all single-type, medical-decision T&P disability applications are approved.^{3,4} My November 18, 2024 Lasater Declaration explains that many claims denials are appealed through the Plan's administrative

¹ Memorandum of Law in Support of Plaintiffs' Motion to Compel Discovery, November 26, 2024. See also, Amended Class Action Complaint, May 12, 2023.

² See Appendix 3 to my November 18, 2024 Lasater Declaration in this matter for a description of the data provided. The relevant population underlying my calculations in this Declaration are those T&P applications described in Appendix Table 3.6 of my November 18, 2024 Lasater Declaration.

³ Table 3, November 18, 2024 Lasater Declaration, p. 16.

⁴ The application approval rate is calculated as the total approved applications divided by the total applications. Alternatively, I note that physicians' approval rates are calculated as a physician's encounters associated with approved applications divided by the physician's total encounters.

appeal process, and because some applications are approved on appeal, the overall approval rate of T&P disability applications following appeal is 51.2%, or 2.8% higher.⁵

8. There are 148 physicians that have performed T&P disability evaluations. Because Neutral Physicians (“NPs”) are paid a flat fee per examination that is the same for all members of a specialty, frequency of retention is a good proxy for aggregate compensation to a Neutral Physician.⁶ With reference to the quartile split of the array of NPs who conducted examinations of the applicants in the dataset I evaluated in my November 18, 2024 Lasater Declaration, the upper quartile of the retained NPs was associated with higher approval rates than the bottom three quartiles.⁷ None of the NPs in the upper quartile was associated with a 100% denial rate.

9. I have analyzed the seven most frequently retained NPs, ordered by total encounters, and averaged those seven NPs’ associated approval rates. The average of the associated approval rates of the seven most frequently retained NPs is 45.3%. None of these seven retained NPs was associated with a 100% denial rate.

10. Among single-type, medical-decision T&P applications, my analysis of the data reflects that the average of the associated approval rates of the 13 most frequently retained neuropsychologists is 35.5%.⁸ The average 33.8% rate of associated application approvals is lower for less frequently retained neuropsychologists. None of these top 13 neuropsychologists was associated with a 100% denial rate.

⁵ November 18, 2024 Lasater Declaration at ¶ 42 and Table 4.

⁶ See, November 18, 2024 Lasater Declaration at ¶ 17 fn. 10.

⁷ November 18, 2024 Lasater Declaration at Table 2.

⁸ The top 14 neuropsychologists are not well-defined due to ties in the number of encounters within the encounter dataset. Instead, the top 13 neuropsychologists have at least 8 encounters and the top 16 neuropsychologists have at least 7 encounters. The top 16 neuropsychologists are associated with an average application approval rate of 34.2%.

The analyses reflected in this Declaration and its Appendices are based on data I have received to date. Should additional facts or data be produced in this matter, I respectfully reserve the right to evaluate whether such facts or data would change in any material way my analyses, interpretations or opinions expressed herein, and also to discuss with counsel for the Defendants whether I would need to supplement this Declaration.

Executed this 10th day of December, 2024 at New York, NY.

A handwritten signature in black ink, reading "David B. Lasater", is positioned above a horizontal line.

David B. Lasater, Ph.D., CPA

David B. Lasater, Ph.D., CPA

III. Appendix 1 – R Script

A. R Script for this Declaration's Analyses